IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/04/2003

Coram

THE HONOURABLE MR.JUSTICE V.KANAKARAJ

C.R.P.No.2772 of 1996 and C.R.P.No. 2773 of 1996

A.G.Krishnamurthy(Since dead)
by his L.Rs
1. Vasanthamma
2. Badrinath
3. Sukanya .. L.Rs. of Petitioner in
both the petitions

-Vs-

M. Jayaramaiah .. Respondent in both the
petitions

Civil Revision Petitions filed under Section 25 of Tamil Nadu
Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1
973 and by Act 10 of 1980) as stated therein.

!For Petitioner : Mr.M.V.Krishnan

^For Respondent : Mr.P.Subba Reddy

:COMMON ORDER

These two revisions are filed against the order dated 28.08.1996 in
R.C.A.No.3 of 1993 and 2 of 1993 on the file of the Appellate Authority
(Subordinate Judge, Krishnagiri), against the orders passed in R. C.O.P.No.11
of 1990 and 9 of 1990 on the file of the Rent Controller (District Munsif,
Hosur).

2. The averments in R.C.O.P.No.9 of 1990 are that the petitioner is a
tenant of a shop belonging to the respondent herein on a monthly rent of
Rs.300/-; that the respondent having received the rent promptly up to July
1998, issued receipts therefor; that thereafter, the respondent did not
receive the rent at all; that he did not issue receipt for the payments made
for three months; that the respondent did not respond to the petitioner's
request to name the bank in which he could deposit the rent; that the
petitioner had paid Rs.5,000/- as advance; that on 18.4.1990, the respondent
sent a notice to the petitioner to which the petitioner sent a reply on
16.5.1990 with a Cheque for Rs.6,300/- on Central Bank; that the said reply
with Cheque had been returned by the respondent's advocate and that therefore,
the petitioner has filed these petitions for deposit of the rent into Court

under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent) Control Act .

3. In his counter, the respondent has stated that it is not true that the petitioner had been a tenant for 12 years and he was paying the rent promptly; that the petitioner did not pay the rent from April 1998 i.e. a sum of Rs.7,800/-; that these respondents maintain a receipt book and the petitioner had signed therein for payment of rent; that the petitioner did not take steps as enunciated under the Rent Control Act that R.C.O.P.11 of 1990 filed by these respondents is pending; that it is not true that the petitioner had paid Rs.5,000/- towards advance; that the allegations that the reply by petitioner together with cheque was returned by the respondent was not true and therefore, the petition is liable to be dismissed.

4. R.C.O.P.No.11 of 1990 has been filed by the owner of shop against the tenant on the allegations that the tenant did not pay rent from April 1998 in a sum of Rs.7,800/-; that the landlord has always been issuing receipts for the payment of rent; that the landlord wants to start a grocery shop of his own in the s hop in question; that the tenant has started a business for which it was not let out; that the tenant has a shop of his own in the bus stand which has been rented out by him to a third party; that to the notice issued by the tenant a suitable reply had been sent and that therefore, the tenant is liable to be evicted.

5. The tenant in his counter has raised similar allegations as had been raised by him in his petition in R.C.O.P.No.9 of 1990 and further contending that the demand by the landlord on his own business purposes is not true and that therefore the eviction petition is liable to be dismissed.
6. The trial Court on consideration of the materials, allowed R.C. O.P.No.9 of 1990 and dismissed R.C.O.P.No.11 of 1990. Aggrieved by that the landlord filed R.C.A.Nos.3 and 2 of 1993 and the appellate authority on re-appreciation of the evidence dismissed both the appeals with costs. Hence, these revisions.

7. During arguments, the learned counsel appearing on behalf of the petitioners besides bringing out the facts of the case as pleaded by parties below would bring out the salient features stating that the rent was Rs.300/- and the petition filed by the landlord was for eviction on grounds of wilful default in payment of the rent by the respondent/tenant and requirement of the premises for personal use and occupation of the landlord; that the original landlord Krishnamurthy died and the L.Rs. impleaded to the proceedings; that on 6.4.1988 was the last rent paid and thereafter for 26 months at a stretch there was no payment of rent at all; that a lawyer's notice was sent for which a reply was sent along with a cheque for Rs.6,300/- as the rent for 20 months; that the same was returned along with the rejoinder; that in fact the rent was due for 26 months on that date and hence the petitioner/landlord filed a petition for eviction in R.C.O.P.No.11 of 1990 ; that the tenant also filed R.C.O.P.No.9 of 1990 and deposited a sum of Rs.6,300/- under Section 8(4) of the Tamil Nadu (Lease and Rent Control) Act; that the landlord's R.C.O.P. was dismissed and the tenant's R.C.O.P. for depositing the rent was allowed; that both the appeals preferred by the landlord were also dismissed confirming the order of the Rent Controller and hence the above Civil Revision Petitions.

8. The learned counsel continuing to argue would submit that it is the duty of the tenant to tender the rent and not that of the landlord to go and collect it from the tenant. Citing the remarks of the Rent Control Appellate Authority the learned counsel would submit that the Appellate Authority should not have confirmed the findings of the Rent Controller at all; that Section 8(4) and 8(5) of the Act are petitions to deposit the rent before the Rent Controller. At this juncture, the learned counsel would cite the following judgments in support of his contentions, they are respectively reported as follows:-

i) 2002 SAR (CIVIL) 936 (E.PALANISAMY V. PALANISAMY (D) BY LRS. & ORS.)
ii) 1999-3 L.W.610 (TAMIL NADU MOTORS, REP. BY GOWTHAM, MADRAS-29 V. N.LAKSHMI)
iii) (1994)II MLJ. 509 (MOHAMED ROWTHER V. RAJALINGA RAJA)
iv) (1995)I MLJ. 64 (ALAGUMANI V. K.SHANMUGHAM AND OTHERS)
v) 1997(III) CTC.39 (S.VENKATESULU V. V.CHANDRA AND 2 OTHERS)
vi) 1997(III) CTC 476 (VIJAYAKUMAR V. RAVINDRAN)

9. So far as the first judgment cited above (supra) is concerned in paragraph 3 which is relied on by the petitioner it has been held:

" The sole question for consideration in these appeals is whether the provisions of Section 8 of The Tamil Nadu Building (Lease & Rent Control Act), 1960 are to be strictly complied with by the tenant before he can seek benefit under the said provisions regarding deposit of rent in the Court. In this connection, relevant provisions of Section 8 of the Act need to be quoted:
"Section 8: (Landlord liable to give receipt for rent or advance):
Sub-section
(1).....
(2) Where a landlord refuses to accept, or evades the receipt of, any rent lawfully payable to him by a tenant in respect of any building, the tenant may, by notice in writing, require the landlord to specify within ten days from the date of receipt of the notice by him, a bank into which the rent may be deposited by the tenant, to the credit of the landlord.
Provided that such bank shall be one situated in the city, town or village in which the building is situated of if there is not such city, town or village, within (five kilometers) of the limits thereof.
Explanation - It shall be open to the landlord to specify from time to time by a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this sub-section.
(3) If the landlord specifies a bank as aforesaid, the tenant shall deposit the rent in the bank and shall continue to deposit in it any rent which may subsequently become due in respect of the building.
(4) If the landlord does not specify a bank as aforesaid, the tenant shall remit the rent to the landlord by Money Order, after deducting the money order commission.
(5) If the landlord refuses to receive the rent remitted by Money Order under sub-section (4), the tenant may deposit the rent before the Controller and continue to deposit with him any rent which may subsequently become due in respect of the building."

10. So far as the second judgment cited above is concerned, it has been held therein:
"On the question of wilful default in payment of arrears of rent, it is settled law that mere default cannot be taken to be wilful. ' Wilful default' implies a conscious or volitional failure to discharge obligations laid down by law on a tenant, which also includes a supine indifference to these obligations. In deciding the element of 'wilful default', each case will have tobe judged on its own merits. It is also settled law that it is the duty of the tenant to pay the rent regularly every month as enjoined in the statute without expecting any demand from the landlady in that regard. If he finds that the landlady is evading the receiving of rent, procedure has been prescribed under Section 8 of the Act to issue notice to the landlady to name the bank and if she does not name the bank, the tenant has to file an application before the Rent Controller for permission to deposit the rent. The omission to avail of the procedure under Section 8 would certainly entitle the landlaldy to seek eviction for wilful default."

11. In the third judgment cited above it has been held:

"From the deposition of the tenant as R.W.1 it could be clearly inferred that the default was wilful. All that the tenant deposes as explanation for the delayed payment every month is that the landlords did not demand it and hence he did not pay. But, it is settled law that it is the duty of the tenant to pay the rent regularly every month as enjoined in the statute without expecting any demand from the landlord in that regard."

12. In the fourth judgment cited above it has been held:
"The liability to pay rent accrues on the expiry of every month. To consider whether the default is wilful or otherwise, there cannot be any hard and fasst standard of rule. It is tobe determined on the facts of each and every case. In this case, earlier a petition was filed for eviction on the ground of requirement for demolition and reconstruction and at the time there was arrears of rent for two months. Thereafter, the tenant had sent rent by money order for four months. There was refusal to receive the rent. Even after the filing of the petition, he had not paid the rent. This conduct cannot be ignored. The totality of the circumstances would lead to the conclusion that default in payment of rent was wilful. The court is unable to hold contra on the facts of this case. It is also unable to subscribe to the theory that once rent was refused by the landlord, for all time to come, the tenant can remain idle and keep quiet without payment of rent and still contend that there was no wilful default in payment of rent."

13. In the fifth judgment cited above it has been held:
"When once the petitioner is under the threat of eviction of the ground of wilful default, the first and foremost duty cast upon him is to pay the rent or at least ought to have sought the permission of the Court to deposit the rent to show his bona fide. Otherwise, the subsequent conduct in non-depositing or non-paying the rent till date can be taken note of which would establish the deliberate wilful default on the part of the petitioner."

14. In the sixth judgment cited above it has been held:
"Eviction of tenant - Tenant committing wilful default not only prior to eviction petition but also during pendency of eviction petition till appeal was preferred - Tenant committed wilful default in payment of rent even after adjustment of alleged deposit of advance available with landlord - Eviction of tenant on ground of wilful default does not call for interference in Revision."

15. Citing the above judgments the learned counsel would exhort that it is a case wherein the subsequent conduct is relevant which would establish that it is a clear case of wilful default; that the tenant has not followed Section 8(2), Section 8(3) and 8(4), but jumps to Section 8(5) which he is not entitled to. On such arguments the learned counsel would pray to allow both the Civil Revision Petitions setting aside the orders of the Courts below.

16. In reply, the learned counsel appearing on behalf of the respondent would in his crisp arguments submit that there is a delay in the payment of the rent but the said delay is neither wilful nor wanton on the part of the respondent/tenant. The learned counsel would point out from the materials made available on record that the rents when paid were not received by the landlord under some pretext or other and hence the tenant was left with no choice but to file the R.C.O.P. No.9 of 1990 and deposit the rent initially a sum of Rs.6,300/-. At this juncture the learned counsel would comment on the judgment reported in 1999(3) Law Weekly 284 cited by the petitioner and would submit that it is no longer a good law and would ultimately pray to dismiss both the Civil Revision Petitions with costs.

17. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both what could be assessed is that the petitioners who are the L.Rs. of one A.G.Krishnamurthy who is now deceased are the landlords of the premises in question pertaining to which the respondent admittedly a tenant on a rent of Rs.300/- per month. It is the case of the respondent that the landlord was prompt in receiving of the monthly rent up to July 1998 issuing receipts for the same but thereafter he refused to receive the rent with ulterior motive and therefore, the respondent herein sent a notice along with a sum of Rs.5000/- by cheque which has been returned by the landlord and therefore tenant would come forward to say that there was no wilful default in payment of rent since the act of the landlord refusing to receive the rents paid is deliberate and therefore, the tenant had to file R.C.O.P.No.9 of 1990 in order to deposit the monthly rent in the Court deposit.

18. On the part of the landlords they would come forward to allege that the tenant was in default from April 1988 to a sum of Rs.7,800/-; that the tenant had not acted in accordance with the legal requirements particularly as required under Section 8(2), 8(3) and 8(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 without compliance of which he cannot all of a sudden jump to resort to Sec. 8(5) of the said Act; that moreover they require the business premises for their own occupation.

19. In order to substantiate their respective contentions in the

joint trial held by the Rent Controller on the part of the landlord the deceased first petitioner/landlord would examine himself as the sole witness besides marking 4 documents as Exs.P1 to P4, Ex.P1 being the counterfoil of the receipt book. Ex.P2 dated 6.4.1988 being the signatures of the tenant in Ex.P1, Ex.P3 dated 23.5.1990 is the reply and Ex.P4 dated 16.5.1990 is the legal notice. On the other hand on the part of the tenant he would also examine one witness and mark 2 documents as Exs.R1 and R2, Ex.R1 being the legal notice dated 13.4.1990, Ex.R2 being the Central Bank cheque dated 16.5.1990. In these materials placed on record wherein in the oral evidence adduced on the part of the sole witness on either side, they would speak of their respective cases pleaded before the Rent Controller and the documentary evidence marked by both the parties are also not in abundance and therefore appreciation of this evidence placed on record, by the Rent Controller was neither a tough job nor a time consuming affair and hence easy conclusions have been arrived at by the Rent Controller. A careful study made into the judgments of the authorities below from out of the fair and decretal order passed by the Rent Controller, it could be seen that the Rent Controller has clearly traced the facts as pleaded by parties without missing any vital point and framing proper point for consideration as it could be seen in paragraph 7 of the fair order and again taking up the subject for his discussion, wherein the Rent Controller would find from the deposition of the landlord that he has let out the premises in favour of the tenant who is the petitioner in R.C.O.P.No.9 of 1990 15 years back for commercial purposes but no tenancy agreement got reduced into writing; that from January 1988 the tenant remitted the rent of Rs.300/- per month, only up to March 1988 and thereafter abruptly stopped paying rent; that only till the payment of the rent he as a tenant has put his signature in Ex. P1 and the last signature dated 6.4.1988 has been made in Ex.P2; that in spite of demands made on the part of the landlord wilful default was made on the part of the tenant in the payment of rent after April 1988 by evading responsibility; that wanting to do grocery business in the premises let out in favour of the tenant the landlord would also express his requirement of the premises and would mark the notice sent to the tenant as Ex.P3 and the reply sent by the tenant in his favour dated 16.4.1990 as Ex.P4 along with the cheque for a sum of Rs.6,300/-.

20. The Rent Controller would also see from the evidence adduced by the son of the tenant on the side of the tenant volunteering to state that he was only taking care of the business at Hosur though his father was at Madras; that he knew about the tenancy agreement; that in the year 1981 the rent was Rs.175/- and in the year 1986 it became Rs.300/-; that the landlord received the rent at the rate of Rs.300/- per month up to April 1988 and thereafter he refused to receive the rent for no reason assigned and hence for the rent of 21 months they sent a cheque for Rs.6,300/- followed by the Rent Control Petition filed before the Rent Controller for deposit of the rents to be made.

21. The Rent Controller having had his own discussions on these evidences placed on record including that of the documentary evidence which would also go into the vital question whether the default which has been admittedly made was wilful as it is required of the Act to be proved or on account of refusal by the landlord in spite of the tenant having promptly come forward to pay the monthly rents and also going through the position of law on

the subject discussing the legal propositions would ultimately arrived at the decision not only to conclude that there is no wilful default made on the part of the tenant but also for the other requirement of the landlord of the building for his use and occupation the Rent Controller did not find any valid reason lying or any genuineness on the part of the landlord in his claim and would reject his contentions on both his claims made for wilful default in payment of rent by the tenant and requiring the building for his own use and occupation would pass the decree in dismissing the R.C.O.P.No.11 of 1990 filed by the landlord and allowing the R.C.O.P.No.9 of 1990 filed by the tenant.

22. Aggrieved, the landlord has filed both the appeals in R.C.A.Nos. 2 of 1993 and 3 of 1993 as against the fair and decretal orders passed by the Rent Controller and Court of District Munsif, Hosur before the Appellate Authority and Court of Subordinate Judge, Hosur. The Appellate Authority also having traced the facts and circumstances of the case as pleaded by parties and having framed its own points for consideration and having discussed the evidence placed on record before the Rent Controller would ultimately arrive at the conclusion not only to dismiss both the appeals but to concur with the decisions arrived at by the Rent Controller as per his common fair and decretal orders passed in the manner aforementioned as a result of which the landlord has come forward to file both the above Civil Revision Petitions on such grounds pleaded and arguments advanced as extracted supra.

23. Needless to mention that the scope of both the above Civil Revision Petitions are limited to the needs of Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 wherein this Court has to specify as to the regularity of such proceedings or the correctness, legality or proprietary of the decision or order passed by the Appellate Authority.

24. The judgments cited on the part of the petitioners would give expression to the legality of certain questions involved pertaining to the subjects dealt with by the concerned courts therein for instance in the first judgment cited above the duties and responsibilities of the landlord and the tenant as enunciated und er Section 8(2), 8(3) and 8(4) of the Act are required tobe complied. Under Section 8(2) of the Act on refusal of the rent by the landlord a notice in writing is required to be issued by the tenant to the landlord, to specify the bank in which the rent could be deposited. Under Section 8(3) of the Act if the landlord specifies the bank the tenant shall deposit the rent in the bank and shall continue to deposit the rent which may subsequently become due. Section 8(4) of the Act would enable the tenant in case the landlord does not specify a bank to remit the rent to the landlord by Money Order after deducting the Money Order commission and Section 8(5) of the Act would enable the tenant on refusal of such Money Order by the landlord as specified u/s 8(4) of the Act, to deposit the rent before the Controller and continue to deposit the same which may subsequently become due.

25. So far as the case in hand is concerned, it should be mentioned that the tenant has not only issued the notice but also has sent the cheque along with the notice, but as it is alleged on the part of the tenant in the very same manner that the landlord refused to receive the rent when it was offered in person, he has also refused to receive the cheque issued by the

tenant, as a result of which the tenant has resorted to file R.C.O.P.No.9 of 1990 for the specific purpose of depositing the monthly rents thereafter and excepting not to follow one more procedure that is contemplated herein that is by sending the amount by Money Order instead of which the tenant has sent it by means of a cheque along with the notice and there is no serious deviation of the procedures established by law which is negligible and hence it must be held that prior to arriving at the stage of Section 8(5) of the Act, the tenant could only be held to have exhausted the procedures established u/s 8(2), 8(3) and 8(4) of the Act and for the landlord there is nothing much to loiter about the compliance of Section 8 (2), 8(3) and 8(4) of the Act prior to arriving at the decision to resort to compliance of Section 8(5) of the Act and hence so far as this judgment is concerned it must be mentioned that on facts since the compliance of the legal provisions are found on the part of the tenant, it should only be held that this judgment cannot go to the rescue of the landlord.

26. In the second judgment cited above it is only held that wilful default implies a conscious or volitional failure to discharge obligations laid down by law on a tenant, which also included a supine indifference to these obligations and in deciding the element of wilful default, each case will have to be judged on its own merits. This judgment would moreover lay emphasis of following the procedure prescribed u/s 8 of the Act in order to judge whether there has been the element of wilful default since it is the duty of the tenant to pay rent regularly as enjoined in the statute without expecting any demand from the landlord in that regard and that the omission to avail the procedure under Section 8 of the Act would certainly entitle the landlord to seek eviction for wilful default.

27. Since these requirements have been very carefully looked into by both the Rent Controller and the Appellate Authority no slackness in the compliance of the requirements of law could be found regarding the facts of the case as it has been well answered while discussing the first judgment above and hence there is no need for any decision to be arrived at in adherence to the principles laid down in this judgment anew since already they have been complied with by the Courts below.

28. In the third judgment, decision has been arrived at by the said Court based on facts in the said case handled by the said Court particularly on the deposition of the tenant himself as R.W.1 from which the Court inferred that the default was wilful. This is not the same situation that is prevalent in the case in hand and therefore this proposition held in this case becomes not applicable to the facts of the case in hand.

29. The 4th judgment which also pertains to the point of wilful default, would point out that it is unable to subscribe to the theory that once rent was refused by landlord, for all the time to come, the tenant can remain idle and keep quiet without payment of rent and still contend that there was no wilful default in payment of rent. Though the proposition held herein is valuable, still, this is not the condition that is prevalent regarding the facts in the case in hand are concerned and therefore, this

proposition cannot also be applied to this case.

30. In the 5th judgment cited above also it is emphasised that the petitioner who is placed under the threat of eviction on ground of wilful default must resort to deposit the rent through the court which the tenant in the case in hand has complied with.

31. The proposition held in the last judgment that not only prior to the eviction petition but also during the pendency of the same, eviction should not be there and this is not the position on the part of the landlord in the case in hand and hence this judgment also becomes inapplicable to the facts of the case in hand.

32. In short, both the Rent Controller and the Appellate Authority have deal with the subject following the procedures established by law and there is absolutely no room to think that either the Rent Controller or the Appellate Authority has deviated from their legal norms in deciding the case at their levels. They have not only traced their facts as pleaded by parties, but also on the part of the Rent Controller regarding the facts placed on record during trial and appreciating the case in evidence has arrived at a valid conclusion and the Appellate Authority too, in the same manner, having dealt with the case to the requirements of law, has arrived at its conclusion to confirm the decision of the Rent Controller and this Court is unable to find any patent error or perversity in approach so far as both the authorities below are concerned in dealing with the subject in hand and since there is no legal infirmity or inconsistency, or laxity or lacuna in a noteworthy manner, the interference of this Court sought to be made into the well considered and merited decisions rendered by the Rent Controller and the Appellate Authority as well is neither necessary nor warranted in the circumstances of the case and hence the following order:

In result,
(i) both the above Civil Revision Petitions do not merit acceptance and they are dismissed;
(ii) the fair and decretal order dated 28.8.1996 made in R.C.A. Nos. 3 and 2 of 1993 by the Appellate Authority (Subordinate Judge), Krishnagiri thereby confirming the fair and decretal order dated 19.2.19 93 made in R.C.O.P.Nos.11 and 9 of 1990 by the Rent Controller(District Munsif), Hosur is hereby confirmed;
(iii) however, in the circumstances of the case, there shall be no order as to costs.

Index:Yes
Internet:Yes

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To
1. The Rent Controller (District Munsif), Hsour.
2. The Rent Control Appellate Authority (Subordinate Judge, Krishnagiri)